

**INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS**

DISTRICT OFFICE: NEW ENGLAND DISTRICT
FILE NUMBER: NAE-2005-977, Bethel Danbury Two LLC

REGULATORY PROJECT MANAGER: Bill Mullen **Date:** 2 May 2005

PROJECT REVIEW/DETERMINATION COMPLETED: In the office Y (Y/N) **Date:** April 27, 2005
At the project site N (Y/N) **Date:**

PROJECT LOCATION INFORMATION:

State: Connecticut
County: Fairfield
Center coordinates of site by latitude & longitudinal coordinates: 41 22.82'N; 73 25.66'W
Approximate size of site/property (including uplands & in acres): 52 acres
Name of waterway or watershed: Still River (Housatonic)

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)	X								
Industrial treatment lagoon									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				X	
Is or would be used as habitat by other migratory birds that cross state lines?				X	
Is or would be used as habitat for endangered species?		X			
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary X Or Approved .

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

This jurisdictional decision applies only to the western portion of the Bethel Danbury Two, LLC site, i.e. the “C-shaped” 52-acre portion of the site northwest of Grassy Plain Street. The site is bounded by Grassy Plain Street on the southeast, Mansfield Street on the southwest, and private properties on the west, north, and east sides, as shown on a plan (sheet OA1) entitled “Overall Site Layout Plan- Timber Oaks, formerly known as Lexington Crossing” and dated November 18, 2002. The site straddles the Bethel/Danbury town line. The site has a history of industrial uses, first as a gravel mine in the 1930’s and most recently as a wood waste storage yard. There is one open-water body of water and two small wetlands on the site (one is 6098 sf, the other is 871 sf), all artifacts of industrial/gravel removal operations that have occurred on the site.

Historic USGS maps and aerial photographs show the site to be highly disturbed, and the site has apparently been highly disturbed for several decades. The open-water body of water in the vicinity of "Water Quality and Detention "Basin C"(shown on the November 18, 2002 plan cited above) is a manmade industrial treatment lagoon. This lagoon was used to settle wash water from a concrete batch plant which operated at the site for many years. Waste treatment systems are specifically exempt from requirements of the Clean Water Act (Sec. 404) under 33CFR Part 328.3.a.7.

The 6098 sf and 871 sf wetlands, identified through field investigations conducted by Environmental Planning Services (consulting firm), do not show up on the National Wetlands inventory map (April 1981 aerial photograph), but are shown on the subject map in the northeast and northwest portions of the property, respectively. These two wetlands are each manmade, and located roughly 1000 feet away from Sympaug Brook and its adjacent wetlands. No surface water connection from the western portion of the property could be ascertained in an examination of aerial photographs and USGS topographic maps from various time periods. In addition, the intervening stretch of land between these two wetlands and Sympaug Brook includes high density residential, commercial and industrial land uses, and a major State road (Route 53). These intervening features undermine any possibility of these two small wetlands as being "neighboring" wetlands. These two small wetlands are thus isolated, intrastate waters that have no discernable nexus to interstate commerce, and are not jurisdictional waters of the United States pursuant to SWANCC.

There are no waters of the United States on the western portion of the Bethel Danbury Two site. There are waters of the U.S. on the eastern portion of the Bethel Danbury Two LLC site, however, this jurisdictional decision does not apply to that approximately three-acre portion of the site.